

Randall B. Bateman (USB 6482)  
BATEMAN IP  
299 South Main Street, Suite1300  
Salt Lake City, UT 84111  
Tel: (801) 533-0320  
Email: rbb@batemanip.com; mail@batemanip.com

*Attorneys for Plaintiffs The Wizard Trades, LLC and Michael Hubbs*

---

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

---

THE WIZARD TRADES, LLC, a Utah  
Limited Liability Company, and MICHAEL  
HUBBS, an individual,

Plaintiff,

vs.

CHARLTON LACHASE, an individual,  
ANDRA RUSH, an individual, STEVEN  
DUHON, an individual, and BRIAN  
HERTNEKY, and individual,

Defendants.

**OPPOSITION TO STEVEN DUHON's  
MOTION TO DISMISS**

Case No. 2:23-cv-00207-DAO

Judge Daphne A. Oberg

---

Plaintiffs, The Wizard Trades, LLC, and Michael Hubbs, hereby oppose the Motion to Dismiss filed by Defendant Steven Duhon.

**BACKGROUND**

Plaintiffs The Wizard Trades, LLC ("TWT") and Michael Hubbs sell a video series providing instruction in sign language on how to engage in day trading. Purchasers are advised that investing in the stock market is risky and are advised to set up a practice account to practice trading with a practice account until they are sufficiently comfortable with the teachings of the program to invest their own money. They are also provided with personal tutoring from Mr.

Hubbs if requested.

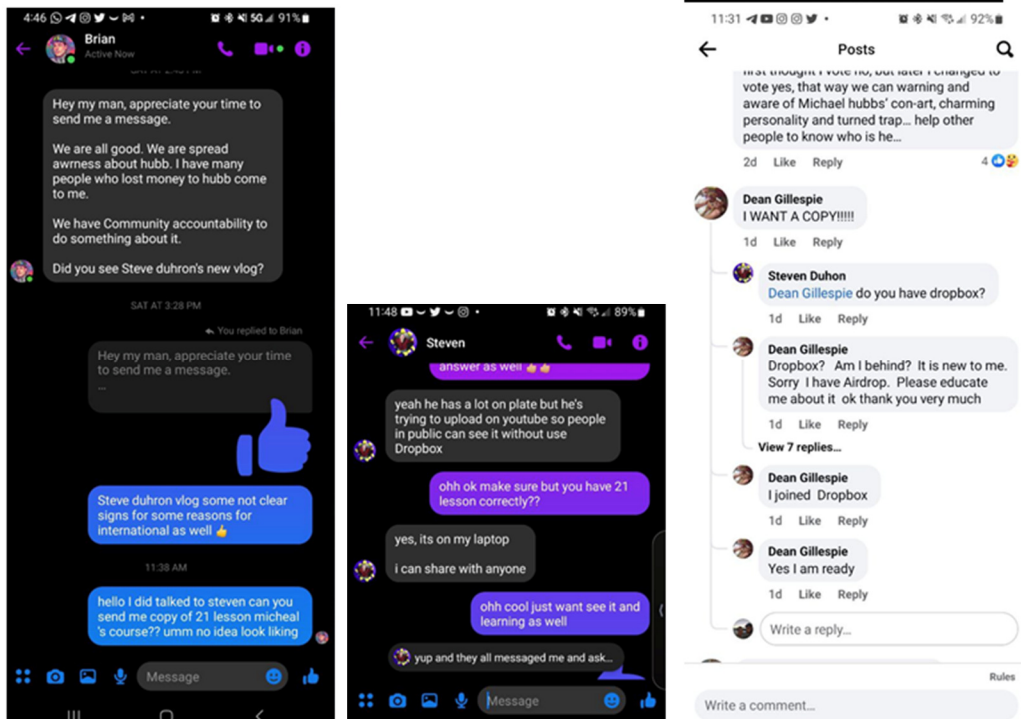
Defendant Charlton Lachase purchased the program. Rather than practice the principles taught in a practice account to ensure that he understood how to apply the concepts, Mr. Lachase opened a live account and allegedly had substantial losses. Mr. Lachase then threatened to provide the TWT videos to the public and threatened to destroy the Plaintiff's business. Mr.

Lachase stated:

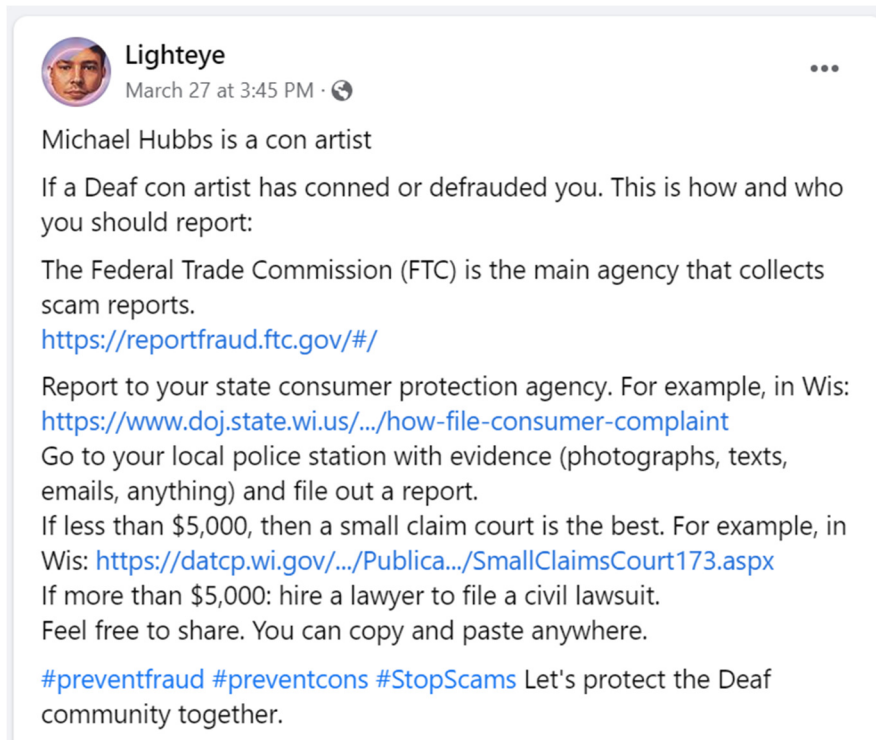
I will share everything of his course materials from lesson 1 to lesson 21 FREE FOR EVERYONE, EVERYTHING FREE hahahaha. I haven't signed any contract, means I can do anything... hahaha. Freedom of speech.

Mr. Lachase went on to state that he would destroy Mr. Hubbs.

Defendant Steven Duhon is an acquaintance of Mr. Lachase and is the admin for a Facebook group called Deaf Stocks & Cryptos, the admin for which is Brian Hertneky, which provides discussions about day trading. Mr. Hertneky and Steven Duhon, conspired to upload all of the Plaintiff's videos to Youtube so that the videos could be seen for free by the public.



Defendants Hertneky and Duhon repeatedly called Mr. Hubbs a con-artist and Mr. Hertneky took the 21 videos provided by Mr. Duhon and posted them to Youtube.



Thus, Plaintiffs have asserted claims for copyright infringement, libel and slander, tortious interference with economic relations, and false advertising.

## **ARGUMENT**

### **I. DUHON FAILS TO IDENTIFY A BASIS FOR A DISMISSAL**

Defendant Duhon filed a motion to dismiss but fails to identify any legal basis for such a dismissal. There is no reference to Rule 12(b) of the Federal Rules of Civil Procedure. Nor are there any references to some other statute or case law which would serve as a basis for dismissing the causes of action. Mr. Duhon fails to identify any legal basis for dismissing the First Amended Complaint.

In considering a Motion to Dismiss, the Court must accept “as true all of the well-pled factual allegations.” *Coll v. First American Title Insurance*, 642 F.3d 876, 886 (10th Cir. 2011)

(citing *Bixler v. Foster*, 596 F.3d 751, 756 (10th Cir. 2010)). All inferences in this analysis are read in favor of the pleader. *Kay v. Bemis*, 500 F.3d 1214, 1217 (10th Cir. 2007).

Rather than pointing out some alleged defect in the allegations in the First Amended Complaint, Mr. Duhon simply denies doing anything illegal. This denial is insufficient to negate the allegations in the First Amended Complaint. Moreover, as shown in the text exchanges above, Mr. Duhon was actively conspiring to upload all of Plaintiff's videos so they would be free to the public. Furthermore, it appears that Mr. Duhon also called Mr. Hubbs a con artist, which is defamation *per se*. *Carroll v. TheStreet.com, Inc.*, 2014 U.S. Dist. LEXIS 156499, \*46 (S.D. FL. 2014); *Reynoso v. Tousson*, 2019 U.S. Dist. LEXIS 156982 (E.D. NY. 2019)(The challenged statements are defamatory per se because, by portraying Reynoso as a con artist, they "tend to injure the plaintiff in his. . . trade, business or profession. Thus, "proof of special harm is unnecessary." (Citations omitted).

While Mr. Duhon may believe that he should be allowed to defame people and steal their intellectual property and conspire with others to destroy Mr. Hubbs, that is not the current state of the law. Mr. Duhon and his acquaintances admitted to encouraging people not to do business with Plaintiffs. They did so through defamation and infringing copyrighted materials. Thus, there is no basis for dismissing the First Amended Complaint against Mr. Duhon.

Respectfully submitted this 5<sup>th</sup> day of May 2023.

BATEMAN IP

/s/ Randall B. Bateman

Randall B. Bateman

*Attorneys for Plaintiffs The Wizard Trades, LLC  
and Michael Hubbs*

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing **OPPOSITION TO STEVEN DUHON'S MOTION TO DISMISS** was served on Defendants via First Class mail on May 5, 2023, as follows:

Steven Duhon  
(at the address of service identified in the executed Summons)

Brian Hertneky  
(at the address of service identified in the executed Summons)

Charlton Lachase  
(at the address of service identified in the executed Summons)

/s/Randall B. Bateman

Randall B. Bateman (USB 6482)  
BATEMAN IP  
299 South Main Street, Suite1300  
Salt Lake City, UT 84111  
Tel: (801) 533-0320  
Email: rbb@batemanip.com; mail@batemanip.com

*Attorneys for Plaintiffs The Wizard Trades, LLC and Michael Hubbs*

---

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

---

THE WIZARD TRADES, LLC, a Utah  
Limited Liability Company, and MICHAEL  
HUBBS, an individual,

Plaintiff,

vs.

CHARLTON LACHASE, an individual,  
ANDRA RUSH, an individual, STEVEN  
DUHON, an individual, and BRIAN  
HERTNEKY, and individual,

Defendants.

**OPPOSITION TO STEVEN DUHON's  
MOTION TO DISMISS**

Case No. 2:23-cv-00207-DAO

Judge Daphne A. Oberg

---

Plaintiffs, The Wizard Trades, LLC, and Michael Hubbs, hereby oppose the Motion to Dismiss filed by Defendant Steven Duhon.

**BACKGROUND**

Plaintiffs The Wizard Trades, LLC ("TWT") and Michael Hubbs sell a video series providing instruction in sign language on how to engage in day trading. Purchasers are advised that investing in the stock market is risky and are advised to set up a practice account to practice trading with a practice account until they are sufficiently comfortable with the teachings of the program to invest their own money. They are also provided with personal tutoring from Mr.

Hubbs if requested.

Defendant Charlton Lachase purchased the program. Rather than practice the principles taught in a practice account to ensure that he understood how to apply the concepts, Mr. Lachase opened a live account and allegedly had substantial losses. Mr. Lachase then threatened to provide the TWT videos to the public and threatened to destroy the Plaintiff's business. Mr.

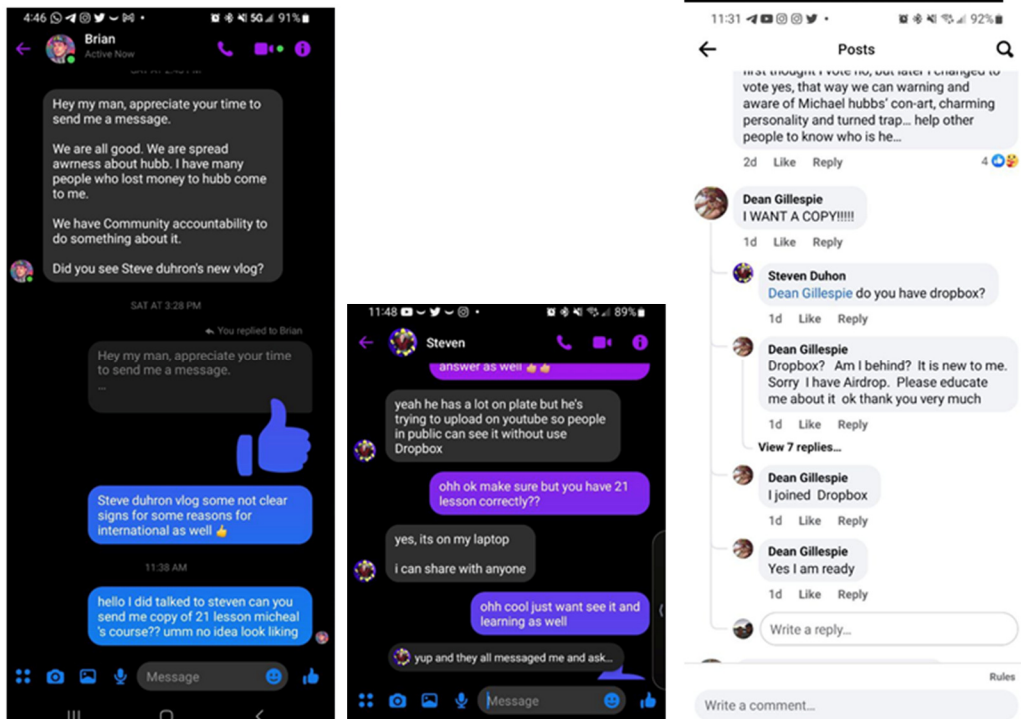
Lachase stated:

I will share everything of his course materials from lesson 1 to lesson 21 FREE FOR EVERYONE, EVERYTHING FREE hahahaha. I haven't signed any contract, means I can do anything... hahaha. Freedom of speech.

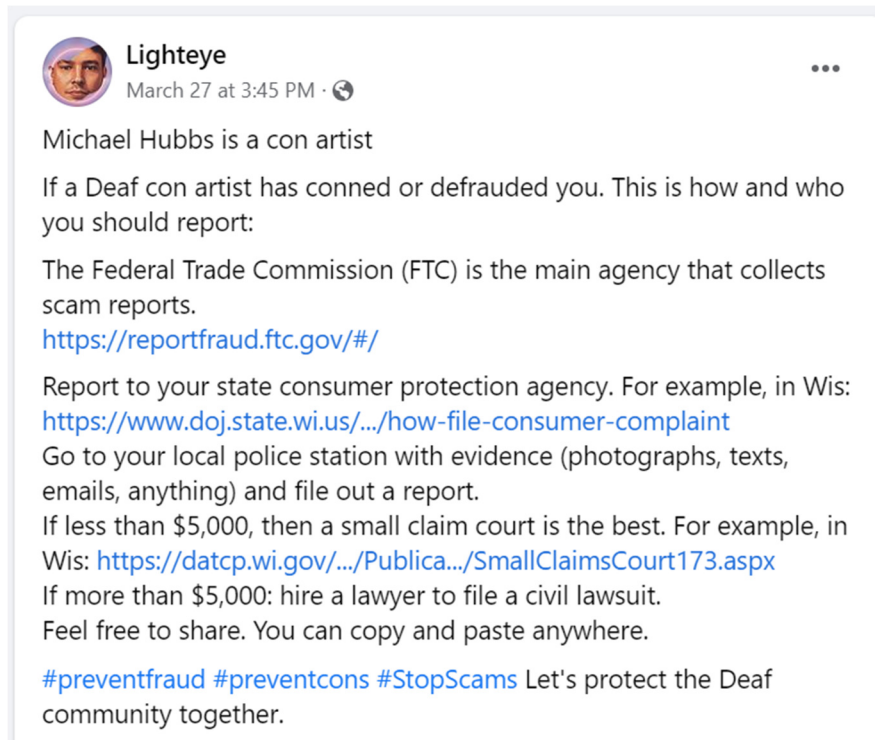
Mr. Lachase went on to state that he would destroy Mr. Hubbs.

Defendant Steven Duhon is an acquaintance of Mr. Lachase and is the admin for a Facebook group called Deaf Stocks & Cryptos, the admin for which is Brian Hertneky, which provides discussions about day trading. Mr. Hertneky and Steven Duhon, conspired to upload all of the Plaintiff's videos to Youtube so that the videos could be seen for free by the public.





Defendants Hertneky and Duhon repeatedly called Mr. Hubbs a con-artist and Mr. Hertneky took the 21 videos provided by Mr. Duhon and posted them to Youtube.



Thus, Plaintiffs have asserted claims for copyright infringement, libel and slander, tortious interference with economic relations, and false advertising.

## **ARGUMENT**

### **I. DUHON FAILS TO IDENTIFY A BASIS FOR A DISMISSAL**

Defendant Duhon filed a motion to dismiss but fails to identify any legal basis for such a dismissal. There is no reference to Rule 12(b) of the Federal Rules of Civil Procedure. Nor are there any references to some other statute or case law which would serve as a basis for dismissing the causes of action. Mr. Duhon fails to identify any legal basis for dismissing the First Amended Complaint.

In considering a Motion to Dismiss, the Court must accept “as true all of the well-pled factual allegations.” *Coll v. First American Title Insurance*, 642 F.3d 876, 886 (10th Cir. 2011)

(citing *Bixler v. Foster*, 596 F.3d 751, 756 (10th Cir. 2010)). All inferences in this analysis are read in favor of the pleader. *Kay v. Bemis*, 500 F.3d 1214, 1217 (10th Cir. 2007).

Rather than pointing out some alleged defect in the allegations in the First Amended Complaint, Mr. Duhon simply denies doing anything illegal. This denial is insufficient to negate the allegations in the First Amended Complaint. Moreover, as shown in the text exchanges above, Mr. Duhon was actively conspiring to upload all of Plaintiff's videos so they would be free to the public. Furthermore, it appears that Mr. Duhon also called Mr. Hubbs a con artist, which is defamation *per se*. *Carroll v. TheStreet.com, Inc.*, 2014 U.S. Dist. LEXIS 156499, \*46 (S.D. FL. 2014); *Reynoso v. Tousson*, 2019 U.S. Dist. LEXIS 156982 (E.D. NY. 2019)(The challenged statements are defamatory per se because, by portraying Reynoso as a con artist, they "tend to injure the plaintiff in his. . . trade, business or profession. Thus, "proof of special harm is unnecessary." (Citations omitted).

While Mr. Duhon may believe that he should be allowed to defame people and steal their intellectual property and conspire with others to destroy Mr. Hubbs, that is not the current state of the law. Mr. Duhon and his acquaintances admitted to encouraging people not to do business with Plaintiffs. They did so through defamation and infringing copyrighted materials. Thus, there is no basis for dismissing the First Amended Complaint against Mr. Duhon.

Respectfully submitted this 5<sup>th</sup> day of May 2023.

BATEMAN IP

/s/ Randall B. Bateman

Randall B. Bateman

*Attorneys for Plaintiffs The Wizard Trades, LLC  
and Michael Hubbs*

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing **OPPOSITION TO STEVEN DUHON'S MOTION TO DISMISS** was served on Defendants via First Class mail on May 5, 2023, as follows:

Steven Duhon  
(at the address of service identified in the executed Summons)

Brian Hertneky  
(at the address of service identified in the executed Summons)

Charlton Lachase  
(at the address of service identified in the executed Summons)

/s/Randall B. Bateman

Randall B. Bateman (USB 6482)  
BATEMAN IP  
299 South Main Street, Suite1300  
Salt Lake City, UT 84111  
Tel: (801) 533-0320  
Email: rbb@batemanip.com; mail@batemanip.com

*Attorneys for Plaintiffs The Wizard Trades, LLC and Michael Hubbs*

---

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

---

THE WIZARD TRADES, LLC, a Utah  
Limited Liability Company, and MICHAEL  
HUBBS, an individual,

Plaintiff,

vs.

CHARLTON LACHASE, an individual,  
ANDRA RUSH, an individual, STEVEN  
DUHON, an individual, and BRIAN  
HERTNEKY, and individual,

Defendants.

**OPPOSITION TO STEVEN DUHON's  
MOTION TO DISMISS**

Case No. 2:23-cv-00207-DAO

Judge Daphne A. Oberg

---

Plaintiffs, The Wizard Trades, LLC, and Michael Hubbs, hereby oppose the Motion to Dismiss filed by Defendant Steven Duhon.

**BACKGROUND**

Plaintiffs The Wizard Trades, LLC ("TWT") and Michael Hubbs sell a video series providing instruction in sign language on how to engage in day trading. Purchasers are advised that investing in the stock market is risky and are advised to set up a practice account to practice trading with a practice account until they are sufficiently comfortable with the teachings of the program to invest their own money. They are also provided with personal tutoring from Mr.

Hubbs if requested.

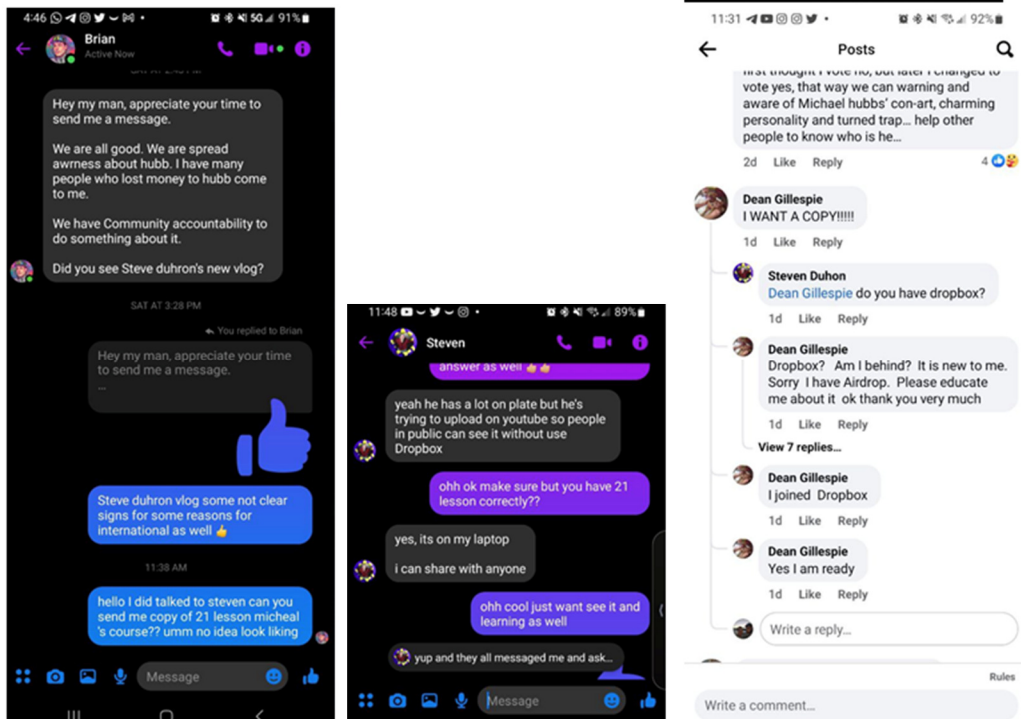
Defendant Charlton Lachase purchased the program. Rather than practice the principles taught in a practice account to ensure that he understood how to apply the concepts, Mr. Lachase opened a live account and allegedly had substantial losses. Mr. Lachase then threatened to provide the TWT videos to the public and threatened to destroy the Plaintiff's business. Mr.

Lachase stated:

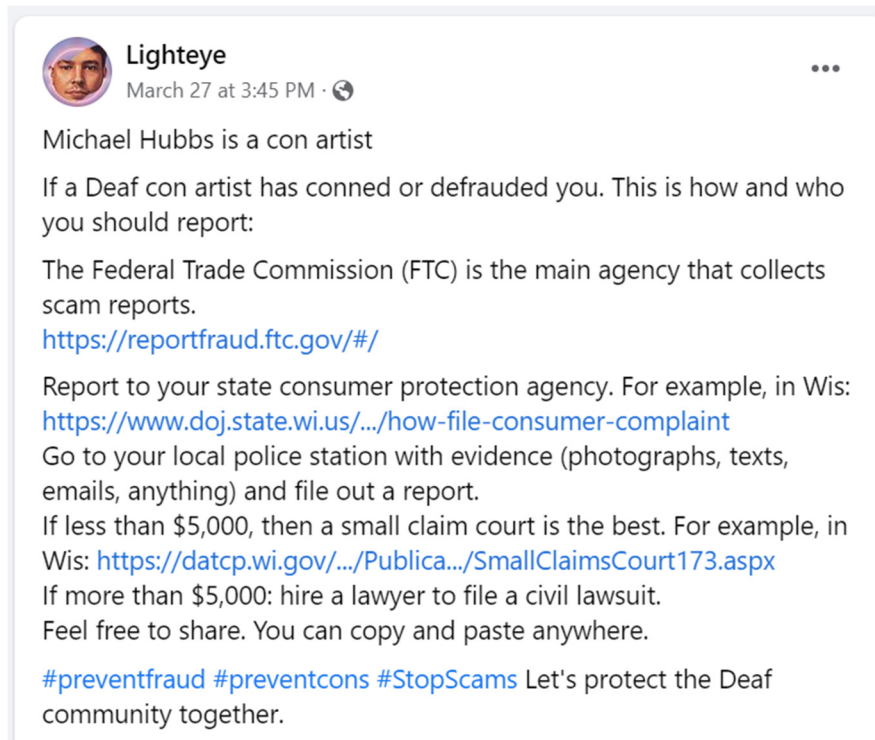
I will share everything of his course materials from lesson 1 to lesson 21 FREE FOR EVERYONE, EVERYTHING FREE hahahaha. I haven't signed any contract, means I can do anything... hahaha. Freedom of speech.

Mr. Lachase went on to state that he would destroy Mr. Hubbs.

Defendant Steven Duhon is an acquaintance of Mr. Lachase and is the admin for a Facebook group called Deaf Stocks & Cryptos, the admin for which is Brian Hertneky, which provides discussions about day trading. Mr. Hertneky and Steven Duhon, conspired to upload all of the Plaintiff's videos to Youtube so that the videos could be seen for free by the public.



Defendants Hertneky and Duhon repeatedly called Mr. Hubbs a con-artist and Mr. Hertneky took the 21 videos provided by Mr. Duhon and posted them to Youtube.



Thus, Plaintiffs have asserted claims for copyright infringement, libel and slander, tortious interference with economic relations, and false advertising.

## **ARGUMENT**

### **I. DUHON FAILS TO IDENTIFY A BASIS FOR A DISMISSAL**

Defendant Duhon filed a motion to dismiss but fails to identify any legal basis for such a dismissal. There is no reference to Rule 12(b) of the Federal Rules of Civil Procedure. Nor are there any references to some other statute or case law which would serve as a basis for dismissing the causes of action. Mr. Duhon fails to identify any legal basis for dismissing the First Amended Complaint.

In considering a Motion to Dismiss, the Court must accept “as true all of the well-pled factual allegations.” *Coll v. First American Title Insurance*, 642 F.3d 876, 886 (10th Cir. 2011)



(citing *Bixler v. Foster*, 596 F.3d 751, 756 (10th Cir. 2010)). All inferences in this analysis are read in favor of the pleader. *Kay v. Bemis*, 500 F.3d 1214, 1217 (10th Cir. 2007).

Rather than pointing out some alleged defect in the allegations in the First Amended Complaint, Mr. Duhon simply denies doing anything illegal. This denial is insufficient to negate the allegations in the First Amended Complaint. Moreover, as shown in the text exchanges above, Mr. Duhon was actively conspiring to upload all of Plaintiff's videos so they would be free to the public. Furthermore, it appears that Mr. Duhon also called Mr. Hubbs a con artist, which is defamation *per se*. *Carroll v. TheStreet.com, Inc.*, 2014 U.S. Dist. LEXIS 156499, \*46 (S.D. FL. 2014); *Reynoso v. Tousson*, 2019 U.S. Dist. LEXIS 156982 (E.D. NY. 2019)(The challenged statements are defamatory per se because, by portraying Reynoso as a con artist, they "tend to injure the plaintiff in his. . . trade, business or profession. Thus, "proof of special harm is unnecessary." (Citations omitted).

While Mr. Duhon may believe that he should be allowed to defame people and steal their intellectual property and conspire with others to destroy Mr. Hubbs, that is not the current state of the law. Mr. Duhon and his acquaintances admitted to encouraging people not to do business with Plaintiffs. They did so through defamation and infringing copyrighted materials. Thus, there is no basis for dismissing the First Amended Complaint against Mr. Duhon.

Respectfully submitted this 5<sup>th</sup> day of May 2023.

BATEMAN IP

/s/ Randall B. Bateman

Randall B. Bateman

*Attorneys for Plaintiffs The Wizard Trades, LLC  
and Michael Hubbs*

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing **OPPOSITION TO STEVEN DUHON'S MOTION TO DISMISS** was served on Defendants via First Class mail on May 5, 2023, as follows:

Steven Duhon  
(at the address of service identified in the executed Summons)

Brian Hertneky  
(at the address of service identified in the executed Summons)

Charlton Lachase  
(at the address of service identified in the executed Summons)

/s/Randall B. Bateman